

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 94

PEST CONTROL OPERATORS

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### SUBCHAPTER 1

#### GENERAL PROVISIONS

§16-94-1 Repealed. [R 9/9/85]

§16-94-2 Objective. This chapter is intended to clarify and implement chapter 460J, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 10/12/74; am and ren §16-94-2, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

### SUBCHAPTER 2

#### DEFINITIONS

§16-94-3 Definitions. As used in this chapter:

"Board" means the pest control board.

"Direct management of the pest control business" means the direct supervision of the pest control project undertaken by the licensee, the control of technical and administrative decisions, personnel management, the review of pest control contracts, and enforcing compliance with all laws and rules affecting the pest control business.

"Person" means an individual, firm, partnership, corporation, joint venture, and any other association of natural persons.

"Pest control field representative" means any individual who is licensed by the board to secure pest control work, identify infestations, make inspections, submit bids, or sign contracts on behalf of a licensed operator.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

"Principal responsible managing employee" or "Principal RME" means the RME through which the business license is maintained.

"Responsible managing employee" or "RME" means the individual responsible for the direct management of the pest control business of the licensee. [Eff 10/12/74; am and ren §16-94-3, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-1)

### SUBCHAPTER 3

#### TYPES OF LICENSES

§16-94-4 Individuals. The board shall issue the following types of licenses:

- (1) Pest control operator, branch 1;
- (2) Pest control operator, branch 2;
- (3) Pest control operator, branch 3;
- (4) RME, branches 1, 2, and 3; and
- (5) Pest control field representative, branches 1, 2, and 3. [Eff 10/12/74; am and ren §16-94-4, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-12)

§16-94-5 Sole proprietorship[, partnership, corporation, joint venture.] and other business entities. The board shall issue licenses for sole proprietorship, partnership, corporation, [and joint venture licenses] joint venture, limited liability corporation, limited liability partnership and any other business entity duly registered and in good standing with the business registration division for categories falling under section 16-94-4(1), (2), and (3). [Eff 10/12/74; am and ren §16-94-5, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-12)

§16-94-6 Repealed. [R 9/9/85]

## SUBCHAPTER 4

### APPLICATION

§16-94-9 Application for license. Applications for licenses shall be filed on a form prescribed by the board, accompanied by the fee which shall be nonrefundable. [Eff 10/12/74; am and ren §16-94-9, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-9) (Imp: HRS §460J-9)

§16-94-10 Repealed. [R 9/9/85]

§16-94-11 Repealed. [R 9/9/85]

§16-94-12 Business office. The place of business shall be located in a zone approved by the political subdivision for operation of the business[.] and shall be a permanent place of business within the State where the pest control entity, pest control operator, or RME may be served notice and legal process. For purposes of this section, "permanent place of business" means a physical address, not a post office box number. The place of business shall require approval of the board. [Eff 10/12/74; am and ren §16-94-12, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp ] (Auth: HRS §460J-11) (Imp: HRS §460J-11)

§16-94-13 Use of "dba". Use of a [fictitious] trade name or "dba" by a pest control operator shall [be] have been previously registered with the department's business registration division and shall be filed with and approved by the board. [Eff 10/12/74; am and ren §16-94-13, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-14 Repealed. [R 9/9/85]

§16-94-15 Repealed. [R 9/9/85]

§16-94-16 Qualification through responsible managing employee or operator. Sole proprietorships, partnerships, corporations, [and] joint ventures, limited liability companies, limited liability partnerships and any other business entities duly registered and in good standing with the business registration division shall qualify through a responsible managing employee (RME) or operator. [Eff 10/12/74; am and ren §16-94-16, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp ] (Auth: HRS §460J-6) (Imp: HRS §460J-8)

§16-94-17 Experience requirement. (a) An applicant for an individual operator license or responsible managing employee license, or both, shall have had the following experience:

- (1) At least [two years experience] one year of specialized field experience as a certified commercial applicator within the past four years immediately preceding the filing of an application [of which one year shall have been in a supervisory capacity] in the branch in which the license is sought;

- (2) At least one year of on-site field supervision actively directing pest control projects whether applying for more than one branch;

- [ (2) ] (3) [The applicant shall have participated in at least one hundred jobs] At least one hundred jobs as an applicator in the specific branch during the [two-year period:] one-year specialized field experience period provided that if restricted use chemicals are used, the applicant shall have been the certified applicator of record and shall verify at minimum, the following:

(A) Branch 1:

One hundred jobs of chemical application consisting of structural fumigation;

(B) Branch 2:

One hundred jobs of chemical and non-chemical applications consisting of one or more of the following formulations: liquids, foams, dusts, gels, aerosols, baits, and granules; provided that not more than fifty jobs shall consist of monitoring, baiting, or non-chemical methods;

(C) Branch 3:

One hundred jobs of chemical and non-chemical applications consisting of one or more of the following formulations: liquids, foams, dusts, gels, aerosols, baits,

and granules; provided that not more than fifty jobs shall consist of monitoring, baiting, or non-chemical methods.

[(3)] (4) Branch 1 (Fumigation). The purpose of fumigation training is to impart the pest control operator or RME with sufficient theoretical and practical knowledge to enable the person to recommend and perform fumigations, inspections, pest identifications, and estimations, to diagram sites for the purpose of calculating volume of the structure, and to properly communicate this to consumers. Valid experience for a branch 1 pest control operator[, branch 1,] and branch 1 RME[, branch 1,] shall include but not be limited to [fumigation of structures using tents];

(A) Inspecting sites and writing inspection reports;

(B) Identifying pests;

(C) Understanding labels and applying pesticides;

(D) Fumigating structures;

(E) Taking readings using electronic and manual fumigation reading equipment;

(F) Calculating application rates of the fumigants and the warning agents;

(G) Diagramming existing structure and calculating volume;

(H) Preparing fumigation sites; and

(I) Clearing the structure to insure safe re-entry.

[(4)] (5) Branch 2 (General Pest). The purpose of general pest control training is to impart the pest control operator or RME with sufficient theoretical and practical knowledge to enable the person to recommend and perform pest control work, inspections, pest identifications, and estimations, to diagram sites as appropriate to make written recommendations for implementing a pest management program for household pests. Valid experience for [the] a branch 2 pest control operator[, branch 2,] and branch 2 RME[, branch 2,] shall include but not be limited to [the control of cockroaches, fleas, ants, rodents, and other household pests];

(A) Inspecting sites and writing inspection reports;

(B) Identifying pests;

(C) Understanding labels and applying pesticides;

(D) Diagramming sites, and existing structures;

(E) Applying pesticides including baits, and using non-chemical methods; and

(F) Calibrating equipment.



[(5)] (6) Branch 3 (Termite). The purpose of ground termite training is to impart the pest control operator or RME with sufficient theoretical and practical knowledge to enable the person to recommend and perform ground termite work, inspections and estimations, and to diagram foundations of structures and areas inspected and to identify conducive conditions to provide written and visual documentation of inspection findings. Valid experience for [the] a branch 3 pest control operator[, branch 3,] and branch 3 RME[, branch 3,] shall include but not be limited to [pre- and post-construction treatment and remedial control of Formosan subterranean termites and the control of drywood termites using methods other than fumigation; and];

(A) Inspecting sites and writing inspection reports;

(B) Identifying pests;

(C) Understanding labels and applying pesticides;

(D) Diagramming foundations of structures and portions of the structure inspected;

(E) Applying pesticides including baits, and using non-chemical methods;

(F) Calibrating equipment;

(G) Performing pre-construction and post-construction treatments using chemical and non-chemical methods; and

(4) Performing remedial treatments for the control of subterranean and drywood termites found in Hawaii.

Fumigation for termites shall not be considered valid experience for branch 3.

[(6)] (7) Certification, under the Hawaii pesticides law by the state department of agriculture as a commercial applicator in the branch for which application is made, shall be held for at least one year prior to the submission of the application. The applicant shall submit proof of a valid, current certification with the application. If an applicant has been certified for less than one year, then the applicant may demonstrate equivalent experience, indicating that the applicant is familiar with the pests and the use of pesticides under the same or similar conditions prevailing in this State.

[(b)] The company employing the applicant shall keep a log of the jobs on which the applicant participated. The record shall include, but not be limited to, the following information:

(1) Date of job;

(2) Client's name and street address;

- (3) Branch of pest control; and
- (4) Chemicals and treatment used.

(c) An applicant for a pest control field representative license shall have at least six months experience in the branch in which the license is sought and certification by the state department of agriculture as a commercial applicator in the branch for which application is made. The applicant shall have participated in at least twenty-five jobs during the six-month period. The definition for experience shall be similar to that used for the operators. The company employing the applicant shall keep a log of the jobs on which the applicant participated.] (b) An applicant for a pest control field representative license shall have at least sixty hours of training and field experience under the supervision of a licensed pest control operator.

- (1) The sixty hours of training for each respective branch shall be comprised of any combination of listed training provided the applicant obtains no fewer than the minimum number of hours in each of the following categories:

(A) Branch 1 (Fumigation). The purpose of fumigation training is to impart the pest control field representative with sufficient theoretical and practical knowledge to enable the person to recommend and perform fumigations, inspections, pest identifications, and estimations, to diagram sites for the purpose of calculating volume of the structure, and to properly communicate this to consumers.

- (i) Inspecting sites and writing inspection reports .....14 hours
- (ii) Identifying pests.....5 hours
- (iii) Understanding labels .....5 hours
- (iv) Fumigating structures .....12 hours
- (v) Taking readings using electronic and manual fumigation reading equipment .....3 hours
- (vi) Calculating application rates of the fumigants and the warning agents .....3 hours
- (vii) Diagramming existing structure and calculating volume .....10 hours
- (viii) Preparing fumigation sites .....5 hours
- (ix) Clearing the structure to insure safe re-entry .....3 hours

(B) Branch 2 (General Pest). The purpose of general pest control training is to impart the pest control field representative with sufficient theoretical and practical

knowledge to enable the person to recommend and perform pest control work, inspections, pest identifications, and estimations, and to diagram sites as appropriate to make written recommendations for implementing a pest management program for household pests.

- (i) Inspecting sites and writing inspection reports .....14 hours
- (ii) Identifying pests.....24 hours
- (iii) Understanding labels..... 8 hours
- (iv) Diagramming sites and existing structures ....5 hours
- (v) Applying pesticides including baits, and using non-chemical methods.....7 hours
- (vi) Calibrating equipment.....2 hours

(C) Branch 3 (Termite). The purpose of ground termite training is to impart the pest control field representative with sufficient theoretical and practical knowledge to enable the person to recommend and perform ground termite work, inspections, estimations, and to diagram foundations of structures and areas inspected and to identify conducive conditions to provide written and visual documentation of inspection findings.

- (i) Inspecting sites and writing inspection reports .....16 hours
- (ii) Identifying pests.....10 hours
- (iii) Understanding labels..... 6 hours
- (iv) Diagramming foundations of structures and portions of the structure inspected .....4 hours
- (v) Applying pesticides including baits, and using non-chemical methods.....10 hours
- (vi) Calibrating equipment.....2 hours
- (vii) Performing pre-construction and post-construction treatment using chemical and non-chemical methods .....6 hours
- (viii) Performing remedial treatments for the control of subterranean and drywood termites found in Hawaii.....6 hours

Fumigation for termites shall not be considered valid experience for branch 3.

- (2) The applicant shall have been an applicator in at least twenty-five jobs within the last four years in the specific branch for which

application is being made and shall verify, at a minimum, the following:

(A) Branch 1 (Fumigation):

Twenty-five jobs of chemical application where the applicant was an applicator on structural fumigation jobs;

(B) Branch 2 (General Pest):

Twenty-five jobs where the applicant was an applicator on chemical and non-chemical application jobs consisting of one or more of the following formulations: liquids, foams, dusts, gels, aerosols, baits, and granules; provided that not more than ten jobs shall consist of monitoring, baiting, or non-chemical methods;

(C) Branch 3 (Termite):

Twenty-five jobs where the applicant was an applicator on chemical and non-chemical application jobs consisting of one or more of the following formulations: liquids, foams, dusts, gels, aerosols, baits, and granules; provided that not more than ten jobs shall consist of monitoring, baiting, or non-chemical methods. [Eff 10/12/74; am and ren §16-94-17, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-18 Exhibits required. (a) Individual applicants for licenses shall furnish the board with the following exhibits:

- (1) Two certificates to support experience qualifications on a form prescribed by the board. One certificate shall be completed by an individual operator or RME licensed in the branch for which the application is made; and
  - (2) A job list to support the experience qualifications on a form prescribed by the board, which shall include the information listed in section [16-94-17(b).] 16-94-17; provided that if, after a good faith effort, the applicant is unable to obtain a verified job list from an individual operator or RME, the board in its sole discretion may accept a job list completed and verified by another person familiar with the applicant's experience.
- (b) Applicants for a business license shall file:
- (1) [A current financial statement prepared by an individual licensed to practice public accountancy and countersigned by the applicant

(statement need not be audited);] A current credit report covering at least the previous five years and issued within six months of the application date of each individual applicant, RME, member of a joint venture or limited liability company, partner of a partnership, manager of a limited liability company, and each officer of a corporate entity;

- (2) A copy of a current [policy of] workers' compensation [insurance or a statement from insurer] certificate from an insurer authorized to conduct business in this State or an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS, that indicates that the policy is in force [and that the board shall be notified of any cancellation or withdrawal of policy. If self-insured, a copy of the "Order of Self-Insurance" issued by the state department of labor and industrial relations]; or proof that the person has been authorized to act as a self-insurer under chapter 386, HRS, or is excluded from the requirements of chapter 386. The board shall be notified of any cancellation, termination, or withdrawal of any policy. Applicants claiming an exclusion under chapter 386, HRS, shall submit and sign a statement claiming such exclusion to the board;
- (3) A copy of a current [policy] certificate of general liability insurance [as required in section 460J-25, HRS;] from an insurer authorized to conduct business in this State, an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS, showing full policy coverage of the applicant in the minimum amount of \$100,000 for any one claim and a minimum aggregate of not less than \$300,000 for all claims arising during a policy term of one year. The board shall be notified in writing at least thirty days prior to any cancellation, termination, or withdrawal of any policy by the insurer. In the event such policy cannot be obtained, the applicant may file with the board in lieu thereof a verified statement providing proof satisfactory to the board of financial responsibility equivalent to that provided for by such insurance policy; and
- (4) A tax clearance or proof of compliance with a payment arrangement from the state department of taxation[.] issued within six months of the application date.

(c) [Corporations] Pest Control entities shall submit a [corporate resolution,] letter signed by the officers of the corporation, partners of a partnership or limited liability partnership, members or managers of a limited liability company, or members of a joint venture designating the RME or RMEs. This [resolution] letter shall also be countersigned by the RME and shall accompany the application for license. [Eff 10/12/74; am and ren §16-94-18, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-8)

§16-94-19 Joint venture license. (a) A joint venture license shall be issued to those joint venture applicants where at least one party holds an appropriate license. All unlicensed members in a joint venture or partners in a partnership shall submit current credit reports, a current tax clearance or proof of compliance with a payment arrangement from the State Department of Taxation, and any other information requested by the board along with the application for licensure.

(b) Except as otherwise provided by law, all joint ventures and partnerships shall be registered with the department's business registration division prior to engaging in any pest control activity. Joint ventures and partnerships shall provide proof of the registration to the board at the time of application.

(c) Dissolution of the joint venture or partnership licensed under this section shall result in the immediate forfeiture of the license of the joint venture or partnership.

(d) The license of a joint venture or partnership shall be automatically forfeited without a hearing if the license of a member or partner is suspended, revoked, terminated, withdrawn, forfeited, or refused to be renewed.

(e) Upon dissolution or forfeiture, the joint venture or partnership shall be prohibited from engaging in any pest control activity and shall not bid upon or enter into any new contracts. [Eff 10/12/74; am and ren §16-94-19, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-8)

§16-94-20 Power of board to approve other experience. The board may approve certain technical training or business administration training as acceptable experience, but in no case shall the training count as more than one year of experience. [Eff and comp 9/9/85; am and comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-21 Power of board to accept equivalent knowledge. The board may accept any reasonably equivalent knowledge, training, or experience of the applicant in lieu of a specific experience requirement if upon investigation it makes a detailed finding to that effect. [Eff and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

## SUBCHAPTER 5

### RESPONSIBLE MANAGING EMPLOYEE

§16-94-23 Repealed. [R 9/9/85]

§16-94-24 Repealed. [R 9/9/85]

§16-94-25 Responsible managing employee (RME). A responsible managing employee shall not be deemed to have direct management of the licensee's pest control business unless the individual is:

- (1) A bona fide employee, principally employed by the licensee; provided, that an individual may be the responsible managing employee for more than one firm if:
  - (A) There is a common ownership of at least fifty-one per cent of the equity of each firm for which the individual acts as responsible managing employee;
  - (B) Each additional firm for which the individual acts as responsible managing employee is a subsidiary of or joint venture with the first;
  - (C) There is a direct family relationship between the responsible managing employee and the officers of each additional firm for which an individual acts as the responsible managing employee; or
  - (D) The board is satisfied that it is in the public interest and that such individual is competent, able, and qualified to be a responsible managing employee for more than one firm;
- (2) In a position to secure full compliance with the pest control law and rules of the board;

- (3) Familiar with all contracts the firm enters into and sees that all contract provisions are carried out. To record that familiarity, the responsible managing employee shall sign or initial all contracts;
- (4) Familiar with all projects the firm undertakes and sees that records are kept on the projects; and
- (5) In residence in the State during the time the RME license is in effect or during the period a project is undertaken. [Eff and comp 9/9/85; am and comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §§460J-3, 460J-12)

§16-94-25.1 Change of employment. The pest control operator shall notify the board of any change in employment status of its designated RME or RMEs within ten working days of the change in status. [Eff and comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-25.5 Record keeping. The pest control operator or RME shall keep records on all jobs performed for a period of two years. The record shall include, but not be limited to, the following information:

- (1) Date of job;
- (2) Client's name and address;
- (3) Branch of pest control; and
- (4) Chemicals and treatment used. [Eff and comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-26 License nontransferable. Licenses issued under the provisions of chapter 460J, HRS, shall be nontransferable. [Eff and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §§460J-3, 460J-12) (Imp: HRS §460J-12)

§16-94-26.1 Revocation, suspension, and refusal to renew license of principal RME. The license of the principal RME may be suspended, revoked, terminated, or refused to be renewed if the license of contracting entity of which the person is the principal RME is revoked, terminated, suspended, or refused renewal pursuant to section 460J-15, HRS. [Eff and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §§460J-3, 460J-15) (Imp: HRS §460J-15)



## SUBCHAPTER 6

### PEST CONTROL FIELD REPRESENTATIVE

§16-94-27 Repealed. [R 9/9/85]

§16-94-28 Repealed. [R 9/9/85]

§16-94-29 Repealed. [R 9/9/85]

§16-94-30 Repealed. [R 9/9/85]

§16-94-31 Repealed. [R 9/9/85]

§16-94-32 Pest control field representative. The employer shall be held responsible for the acts, conduct, representations, etc., of the pest control field representative within the scope of pest control field representative's employment. The employer also shall be held responsible with the pest control field representative for any violation of the pest control law, safety rules, or this chapter by the field representative and the board may take disciplinary action against the employer as well as the pest control field representative. [Eff and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

## SUBCHAPTER 7

### EXAMINATION FOR INDIVIDUAL LICENSE

§16-94-35 Examination. All applicants shall qualify in a written examination by passing with a score of seventy per cent or better. Examinations shall be given [quarterly] regularly and partial credit shall not be given for any part of the examination. [Eff 10/12/74; am and ren §16-94-35, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp ] (Auth: HRS §460J-13) (Imp: HRS §460J-13)

§16-94-35.1 Examination not required. An examination shall not be required when the applicant, within a period of one year prior to application, has previously qualified by written examination or was licensed in good standing or on an inactive status, provided the applicant applies for a license in the same branch in which the applicant previously qualified by examination or was licensed in good standing or on an inactive status. [Eff and comp ] (Auth: HRS §460J-3) (Imp: §§460J-3, 460J-9, 460J-14)

§16-94-36 Reexamination. An applicant for reexamination shall apply on a form prescribed by the board, accompanied by the nonrefundable application fee. A candidate may be reexamined any number of times, provided the application fee is filed for each examination. [Eff 10/12/74; am and ren §16-94-36, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; comp ] (Auth: HRS §460J-9) (Imp: HRS §460J-3)

§16-94-37 Filing deadline. Applications shall be filed no later than forty-five days before the date of examination. [Eff and comp 9/9/85; am and comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

## SUBCHAPTER 8

### LICENSE RENEWAL

§16-94-40 License renewal. (a) Each license shall be renewed on or before June 30 of even-numbered years.

(b) Application for renewal shall be accompanied by the applicable fee.

(c) Pest control business licensees shall submit a [State] tax clearance[.] or proof of compliance with a payment arrangement from the State department of taxation issued within six months of the application date.

(d) Operators, RMEs, and field representatives shall submit proof of valid, current certification with the department of agriculture in the appropriate category and subcategories.

(e) Failure, neglect, or refusal to pay the renewal fee shall constitute grounds for forfeiture of license. A forfeited license may be restored upon written application within one year and upon payment of the applicable fee. If application

for restoration is not made within one year from date of forfeiture, the individual shall be considered a new applicant and shall satisfy all the requirements for licensure. [Eff 10/12/74; am and ren §16-94-40, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp ] (Auth: HRS §§460J-3, 460J-14) (Imp: HRS §460J-14)

#### SUBCHAPTER 9 Repealed.

§16-94-44 Repealed. [R 9/9/85]

§16-94-45 Repealed. [R 9/9/85]

§16-94-46 Repealed. [R 9/9/85]

§16-94-47 Repealed. [R 9/9/85]

§16-94-48 Repealed. [R 9/9/85]

#### SUBCHAPTER 10

##### INSURANCE

§16-94-49 Insurance. (a) No person shall engage in the business of pest control unless the person has filed with the [director of commerce and consumer affairs a general liability insurance policy approved by the director] board a current copy of a certificate of general liability insurance from an insurer authorized to conduct business in this State, an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS, showing full policy coverage of the applicant in the minimum amount of \$100,000 for any one claim and a minimum aggregate of not less than \$300,000 for all claims arising during a policy term of one year. The insurance shall cover all branches of pest control work performed or subcontracted by the pest control operator. The board shall be notified in writing at least thirty days prior to any cancellation, termination, or withdrawal of

any policy by the insurer. In the event such policy cannot be obtained, the licensee may file with the board in lieu thereof a verified statement providing proof satisfactory to the board of financial responsibility equivalent to that provided for by such insurance policy; provided that no employee of any company need have such policy in effect with respect to work covered by a policy of the company by which the employee is employed. This section shall not apply to vault fumigation.

(b) In addition to subsection (a), no person shall engage in the business of pest control unless [satisfactory proof is submitted that the person has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386, HRS.] the person has filed with the board a current copy of a workers' compensation certificate from an insurer authorized to conduct business in this State or an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS, that indicates that the policy is in force; or proof that the person has been authorized to act as a self-insurer under chapter 386, HRS, or is excluded from the requirements of chapter 386. Applicants claiming an exclusion under chapter 386, HRS, shall submit and sign a statement claiming such exclusion to the board. The board shall be notified in writing at least thirty days prior to any cancellation, termination, or withdrawal of any policy by the insurer. [Eff 10/12/74; am and ren §16-94-49, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp ] (Auth: HRS §§460J-25, 386-121) (Imp: HRS §§460J-25, 386-121)

Historical Note: Emergency Rules amending §16-94-49(b) and (c) [Eff 10/12/74; am and ren §16-94-49, 6/22/81; am 4/25/85] (Auth: HRS §§460J-25, 386-121) (Imp: HRS §§460J-25, 386-121)

#### SUBCHAPTER 11 Repealed.

§16-94-53 Repealed. [R 9/9/85]

§16-94-54 Repealed. [R 9/9/85]

§16-94-55 Repealed. [R 9/9/85]

§16-94-56 Repealed. [R 9/9/85]

§16-94-57 Repealed. [R 9/9/85]

§16-94-58 Repealed. [R 9/9/85]

§16-94-59 Repealed. [R 9/9/85]

§16-94-60 Repealed. [R 9/9/85]

## SUBCHAPTER 12

### GENERAL PEST CONTROL REGULATIONS (HOUSEHOLD PESTS)

§16-94-64 Repealed. [R 9/9/85]

§16-94-65 Repealed. [R 9/9/85]

§16-94-66 General pest control. Possession and use of pesticides shall conform to the requirements of federal and state pesticides laws. [Eff 10/12/74; am and ren §16-94-66, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

## SUBCHAPTER 13

### TERMITE CONTROL REGULATIONS

§16-94-70 Termite control. Possession and use of termiticides shall conform to the requirements of federal and state pesticides laws. An inspection report shall be prepared on a form prescribed by the board which shall contain, in addition to the requirements contained in section 460J-19(b), HRS, the following:

- (1) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected. The diagram shall indicate the approximate location of any damage by termites; and

- (2) A statement describing inaccessible areas which were not inspected. These areas may include, but not be limited to, inaccessible subareas, attics, areas with insufficient clearance, areas which require defacing finished surfaces for entry, furnished interiors, interior of hollow walls, spaces between a floor or porch deck and the ceiling or soffit below, and areas where storage conditions or locks make inspection impractical. The licensee shall explain the reason or reasons why any accessible area is not inspected. [Eff 10/12/74; am and ren §16-94-70, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-19)

§16-94-71 Recommendation. Each inspection report shall contain recommendations for treatment of termites. [Eff 10/12/74; am and ren §16-94-71, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; comp ] (Auth: HRS §460J-20) (Imp: HRS §460J-20)

§16-94-72 Control service agreement. A control service agreement if contracted, shall be in writing and signed by the licensee, or the licensee's representative, and the client, and shall include, in addition to requirements as set forth in section 460J-19(c), HRS, the following:

- (1) The frequency of the inspection service to be provided, the fee to be charged for each inspection service performed, and the expiration date of agreement;
- (2) The type and manner of treatment of any infestation or reinfestation;
- (3) Whether control service inspection fee includes [structural] repairs;
- (4) Whether treatment of any infestation or reinfestation covered under a control service agreement may be performed at the time of inspection and whether there will be an additional charge for the treatment at that time; and
- (5) The operator shall keep the original inspection report and any subsequent control service reports for a period of not less than two years after completion of the control service agreement. The records shall be made available to the representative of the board during business hours. [Eff 10/12/74; am and ren §16-94-72, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and

comp  
§460J-19)

] (Auth: HRS §460J-19) (Imp: HRS

#### SUBCHAPTER 14 Repealed.

§16-94-76 Repealed. [R 10/16/95]

#### SUBCHAPTER 15

##### ADVERTISEMENT

§16-94-80 Guaranty; guarantee; guaranteed. The terms "guaranty," "guarantee," or "guaranteed" shall not be used in any advertising without a specific statement describing the limitations and conditions of the "guaranty," "guarantee," or "guaranteed." The statement shall include a description of the work to be performed under the "guaranty," "guarantee," or "guaranteed." [Eff 10/12/74; am and ren §16-94-80, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-81 Termite-proof. This term shall not be used. [Eff 10/12/74; am and ren §16-94-81, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-82 Free inspection; free inspection report. The terms "free inspection" or "free inspection report" shall not be used in advertisements unless a written report of the "free inspection" or "free inspection report" is given to the person requesting the service. The report shall be on a form which conforms to the minimum requirements of this chapter. [Eff 10/12/74; am and ren §16-94-82, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-83 Bond; bonded. The terms "bond" or "bonded" shall only be used when the conditions and circumstances under which the bond is issued are clearly stated. The payee of the bond shall be identified in the written statement.

[Eff 10/12/74; am and ren §16-94-83, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-84 Government approved. Such claims as "Method Approved by the Government" or "U.S. Government Approved" shall not be used. [Eff 10/12/74; 10/12/74; am and ren 16-94-84, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-85 Identification of company vehicles. All company-operated service vehicles shall be properly identified with the company's name and pest control operator's license number. [Eff 10/12/74; am and ren §16-94-85, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-86 Advertising. The company's name and pest control operator's number shall appear in all advertisements on TV, radio, newspapers, telephone directories, handbills, or other media. [Eff 10/12/74; am and ren §16-94-86, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

## SUBCHAPTER 16

### SEVERABILITY

§16-94-90 Severability. If any section of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected. [Eff and comp 9/9/85; comp 10/16/95; comp ] (Auth: HRS §460J-3) (Imp: HRS §460J-3)



## SUBCHAPTER 17

### PRACTICE AND PROCEDURE

§16-94-94 Administrative practice and procedure. The rules of practice and procedure for pest control operators shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter." [Eff and comp 9/9/85; am and comp 10/16/95; comp ] (Auth: HRS §§91-2, 460J-3) (Imp: HRS §§91-2, 460J-3, 460J-16)

§16-94-97 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours before the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period, but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant or immaterial to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to hearings relief, declaratory relief, or rule relief of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda.

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 16-94, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

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MICHAEL BOTHA, Chairperson  
Pest Control Board

APPROVED AS TO FORM:

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Deputy Attorney General

Amendment and Compilation of Chapter 16-94  
Hawaii Administrative Rules

1. Chapter 16-94, Hawaii Administrative Rules, entitled "Pest Control Operators" is amended and compiled to read as follows:\_\_\_\_\_

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